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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,209	11/06/2006	John Rodney Keats	CU-4693 RJS	8022
26530	7590	07/27/2009		EXAMINER
LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604				WILLIAMS, MONICA L
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,209	<b>Applicant(s)</b> KEATS, JOHN RODNEY
	<b>Examiner</b> MONICA L. WILLIAMS	<b>Art Unit</b> 3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 June 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 72-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 72-92 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/09/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 72-74, 76-81, and 83-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (GB 2,369,980 A) in view of Lund (5,555,676).
3. In re claims 72-74 as best understood from applicant's disclosure, with reference to Figures 1 and 3 and page 4 paragraph 5, Stone discloses a plant pot which, in use, is adapted to be stacked with one or more similar plant pots, the plant pot comprising a cavity (10) defined by a bottom wall and a side wall of the plant pot, and overflow outlet adapted to enable excess liquid to flow out of the cavity, and elongate body, a substantially centrally located aperture adapted to have the elongated body pass

through the bottom wall, and a recess formed in the bottom wall opposite the cavity. Not disclosed is a pump in fluid communication with the elongate body.

4. However, with reference to Figure 1, col.4 lines 48-52, and col.5 lines 40-42, Lund discloses a stacked plant array comprising a cavity (16), an elongate body (42,20) comprising a perforated (22) pipe, and a pump (40) being in fluid communication with the elongated body. The advantage of this is to deliver the excess water in the cavity below to the plants above. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the plant pot of Stone to include a pump as taught by Lund in order to recycle the water in the cavity to the plant.

5. In re claim 76, with reference to Figures 1 and 3 and page 4 paragraph 5, Stone discloses a separation means (24) adapted to separate the water reservoir region from the soil holding region in the cavity.

6. In re claim 77, with reference to Figure 1, Stone discloses the water reservoir region (26) is laterally defined, at least partially, by a side wall of the plant pot.

7. In re claim 78, with reference to Figure 1, Stone discloses the water reservoir region (26) is laterally defined, at least partially, by a dam wall (22) located inwardly of the side wall.

8. In re claim 79, with reference to Figure 1, Stone discloses the dam wall (22) extends upwardly from a base of the plant pot.

9. In re claim 80, with reference to Figure 1, Stone discloses the dam wall (22) substantially follows the contour of the side wall of the plant pot.

10. In re claim 81, with reference to Figure 1, Stone discloses the water reservoir region (26) is laterally defined by a combination of both the side wall of the plant pot and the dam wall (22).
11. In re claim 83, with reference to Figure 1, Stone discloses the overflow outlet comprises one or more holes in an upper portion of the dam wall (22), the entire top of the dam wall having a hole in it.
12. In re claim 84, with reference to Figure 1, Stone discloses the overflow outlet comprises a gap between the upper rim of the dam wall (22) and the separation means (24).
13. In re claim 85, Stone, as modified by Lund, discloses the claimed invention except for the separation means seated on the dam wall.
14. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the dam wall (22) of Stone as modified by Lund to reach the separation means (24) for added support and only have a portion of the dam wall comprise one or more grooves, bites, cut-outs, or slots in the upper rim of the dam wall to drain the water.
15. In re claim 86, with reference to Figure 1, Stone discloses an overflow chamber adapted to receive excess water from the reservoir region (26).
16. In re claim 87, with reference to Figure 1, Stone discloses the overflow chamber includes a drainage outlet (18) for water to drain therethrough.

17. In re claim 88, with reference to Figure 1, Stone discloses the overflow chamber is laterally defined by an outer surface of the dam wall (22) and at least a portion of the side wall.

18. In re claim 89, with reference to Figure 1 and page 4 paragraph 4, Stone discloses soil watering means (M) adapted to transfer water from the water reservoir region (26) to the soil holding region (12).

19. In re claim 90, with reference to Figure 1 and page 4 paragraph 4, Stone discloses the soil watering means (M) comprises an absorbent wick which extends between the water reservoir region (26) and the soil holding region (12).

20. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (GB 2,369,980 A) in view of Lund (5,555,676) as applied to claims 72-74, 76-81, and 83-90 above, and further in view of Russell (196,937).

21. In re claim 75, Stone as modified by Lund disclose the claimed invention except for a saucer plate.

22. However, with reference to Figure 1, Russell discloses a plant pot with a saucer plate disposed below the bottom wall and shaped and configured to retain liquid flowing out of the cavity from the overflow outlet. The advantage of this is to prevent spills. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the plant pot of Stone as modified by Lund with the saucer plate as taught by Russell in order to prevent spills.

23. Claim 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (GB 2,369,980 A) in view of Lund (5,555,676) as applied to claims 72-74, 76-81, and 83-90 above, and further in view of Johnson, Sr. (3,452,475).

24. In re claim 82, Stone, as modified by Lund, discloses the claimed invention except for the overflow outlet comprising one or more holes in the side wall.

25. However, with reference to Figure 1 and col.2 lines 71-72, Johnson, Sr. discloses providing over flow apertures (43) in the side walls. The advantage of this is to drain more excess water out. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have overflow outlet comprising one or more holes in the side wall of Stone as taught by Johnson, Sr. in order to drain more excess water out.

26. Claim 91 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (GB 2,369,980 A) in view of Lund (5,555,676) as applied to claims 72-74, 76-81, and 83-90 above, and further in view of Keats (WO 1998/056233 A).

27. In re claim 91, Stone, as modified by Lund, discloses the claimed invention except for a plurality of radially extending lobe section and bridge sections.

28. However, with reference to Figure 1, Keats discloses a plant pot with a plurality of radially extending lobe sections (11) and bridge sections (13), the bridge sections connecting the lobe sections. The advantage of this is for stacking pots and draining water to the subsequent lower pots. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the pot of

Stone as modified by Lund with a plurality of radially extending lobe section and bridge sections as taught by Keats as an alternative way to stack the pots and drain water to the subsequent lower pots.

29. Claim 92 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, Sr. (4,419,843).

30. In re claim 92, with reference to col.3 lines 44-57, col.4 lines 19-22, col.5 lines 30-32, col.6 lines 60-62, and Figures 2 and 3, Johnson, Sr. discloses a plant pot which, in use, is adapted to be stacked with one or more similar plant pots, the plant pots comprising a cavity (trays 16A-F) defined by a bottom wall and a side wall of the plant pot; an overflow outlet (38) adapted to enable excess liquid to flow out of the cavity; an elongated body (22); a centrally located aperture (14) adapted to have the elongated body pass unrestricted through a plurality of bottom walls in a series of one or more plant pots positioned on the offset into a stacked formation; a recess (12) formed in the bottom wall opposite the cavity; and a pump being in fluid communication with the elongated body. Not disclosed is the pump being located in the recess.

31. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed the pump in the recess where the liquid is collecting, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

***Response to Arguments***

32. Applicant's arguments filed 06/09/2009 have been fully considered but they are not persuasive.
33. In response to applicant's arguments that the apertures of Stone are not centrally located but rather located to the side, this argument is not persuasive because the Examiner is taking the broadest reasonable interpretation of the phrase "centrally located" to mean that the apertures are located in a central portion of the bottom wall; meaning not located in the edge. Webster's Dictionary defines central as "situated at, in, or near the center".
34. In response to applicant's argument that the dividing wall as disclosed by Stone cannot be considered a bottom wall of the plant pot and that the base (3) must be considered the bottom of the plant pot, this argument is not persuasive because there is no structure claimed to prevent one from considering the dividing wall (24) to be a bottom wall. The plant and the growing medium are all contained by the dividing wall so it is unclear why it could not structurally be considered the bottom of the plant pot?

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA L. WILLIAMS whose telephone number is (571)270-3113. The examiner can normally be reached on Mon to Fri 6:00-3:30, Alternate Friday off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/  
Supervisory Patent Examiner, Art Unit 3644

MW 07/21/2009